

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

ASH GROVE CEMENT COMPANY

Employer

and

Case 19-RC-14734

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION, LOCAL 19

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record<sup>1</sup> in this proceeding, the undersigned makes the following findings and conclusions.<sup>2</sup>

**I. SUMMARY**

The Employer is a State of Delaware corporation engaged in the business of manufacturing cement for wholesale at its plant located in Seattle, Washington (hereinafter "plant"). The Petitioner filed the instant petition seeking to represent a wall-to-wall unit composed of approximately 54 production and maintenance employees employed by the Employer at its plant. The Employer seeks to exclude control room operators and shipping employees from the petitioned-for unit. Specifically, the Employer asserts that the control room operators are supervisors as that term is defined by Section 2(11) of the Act and, therefore, should be excluded from the Act. Further, the Employer asserts that control room operators and shipping employees should be excluded from the unit because they do not share a sufficient community of interest with the other unit employees.<sup>3</sup>

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<sup>1</sup> The Employer and the Petitioner timely filed briefs, which were duly considered.

<sup>2</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>3</sup> The Employer and the Petitioner stipulated on the record that the following job classifications are appropriately included in the unit: mechanic specialist, instrument/electrical specialist, preventive maintenance instrument/electrical specialist, preventive maintenance mechanical specialist, preventive maintenance lubrication specialist, preventive maintenance conveyor specialist, equipment attendant, preventive maintenance dust collector specialist, mechanical specialist-mobile equipment, general laborer, material/utility (material handler), production utility, and quality control technician. Although initially at issue, the Employer and the Petitioner stipulated on the

Based on the record as a whole and the parties' respective briefs, I find that the control room operators are not supervisors and that the petitioned-for wall-to-wall production and maintenance unit constitutes an appropriate unit. Accordingly, I shall direct that an election be held in the petitioned-for unit.

Below, I have set forth the record evidence concerning the Employer's operations, the alleged supervisory status of the control room operators, and concerning the community of interest factors the Board considers when determining unit appropriateness. Following the presentation of the evidence, I have set forth a section applying the Board's legal standards to the evidence. The decision concludes with a direction of election and the procedures for requesting review of this decision.

## **II. RECORD EVIDENCE**

### **A. The Employer's Operations**

The Employer operates a cement manufacturing plant in the Port of Seattle in Washington State. The Employer's plant comprises approximately 22 acres located near the mouth of the Duwamish River. The Employer's plant produces three types of cement (low alkali, early hard and course grain) from calcium, iron, aluminum, silica, and gypsum. The Employer's plant also uses tires and coal as fuel during the production process.

According to the plant schematic (Employer's exhibit 2), the production process begins with the unloading of barges or trucks containing the raw materials, including limestone, silica and coal, that are used in the process. For the most part, the materials are stored in large piles near the river on the west side of the Employer's plant. The materials are then transferred from the storage piles to raw material bins at various plant locations depending on when the materials are introduced into the production process. The limestone is placed in material bins near the west end of the plant. The silica, the iron source (iron slag), and the aluminum source (bottom ash) are placed in material bins on the north side of the plant. The materials are then sent to the raw mill at the plant, which is just to the east of the limestone material bins. In the raw mill, the materials are crushed to a fine powder. The crushed material is then mixed in the blending silos and stored in the storage silos, which are located just to the north of the raw mill.

The crushing and mixing process, described above, produces a product called kiln feed. The feed is then processed through the pre-heat tower where it passes through a series of cyclones that heat it to approximately 1000 degrees Fahrenheit. After the feed has passed through the pre-heat tower, it enters a rotary kiln, which is a long tube running west to east in the middle of the Employer's plant. In the kiln, the kiln feed is heated to a temperature of approximately 2,700 degrees Fahrenheit. During this process, the chemical reactions take place and the iron, aluminum and silica react with the calcium until they are nearly expended. The product coming out of the kiln, called clinker, enters two coolers at the east end of the kiln. The clinker is conveyed back toward the river to storage silos, just south of the raw material mill. From there, the clinker is conveyed east to a second mill at the plant, the finish mill, where the clinker is mixed with gypsum and crushed into a fine power. The finished product, cement, is

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record that the following job classifications are managerial positions and therefore excluded from the unit: stores supervisor, maintenance planner and chemist intern. The Employer and Petitioner further stipulated on the record that the following job classifications are supervisory positions and therefore excluded from the unit: maintenance supervisor, instrument/electrical supervisor, labor superintendent/lead, shift supervisor, and shipping supervisor.

placed in storage silos where it is loaded into trucks, railcars, or into 4,000 lb. bags for shipment.<sup>4</sup>

The plant operates 24 hours a day, 365 days a year. However, there are scheduled shutdowns for certain machines, such as the kiln, for yearly maintenance. The plant currently employs approximately 84 people of whom approximately 30 are salaried employees and 54 are production and maintenance employees. The plant manager is Craig Puljan. The maintenance manager, the human resources manager, the production manager, the chief chemist, the safety/environment manager, and the automation manager all report directly to Puljan. According to the Employer's personnel chart (Employer's exhibit 1) and job descriptions (Employer's exhibit 7), 54 employees work in either the maintenance department or the production department.<sup>5</sup> Approximately 20 of the 54 employees work in the maintenance department as mechanical specialists, instrument/electrical specialists and various types of preventative maintenance specialists. The production department consists of approximately 34 employees including 4 general laborers, 9 material utility employees (material handlers), 8 control room operators, 4 quality control technicians, 4 production utility employees and 5 shipping employees.

With the exception of the control room operators, shipping employees and quality control technicians, the record is unclear whether certain employees work exclusively in one particular area or throughout the plant. According to Plant Manager Puljan, some job classifications, such as mechanical specialist and instrument/electrical specialist, work throughout the plant. The control room operators, who work in pairs and on crews with other production classifications/employees, alternate between working throughout the plant and exclusively in the control room.

A significant portion of the Employer's operations is automated. At the heart of the operation is the control room, where computers monitor and control the production process. The control room operators are responsible for ensuring that the production process runs smoothly by monitoring and inspecting the production process and equipment either in the control room or by making rounds through the plant.

The shipping employees work in the eastern end of the plant near the silos, where they load the product on trucks and trains and complete bills of lading. In addition, they have some contact with customers of the Employer. The quality control technicians work in both the plant and the laboratory and are responsible for checking the quality of the product.

In addition to the control room operators, shipping employees and quality control technicians, the other employees also have specific job functions. The maintenance employees are responsible for maintaining the operational integrity of the plant, including making necessary repairs, monitoring equipment, and doing preventative maintenance. The general laborers perform general clean-up and material handling duties. The material handlers are the primary heavy equipment operators. The production utility employees essentially perform the same function as the control room operators when the control room operators work in the plant. The production utility employees also monitor and inspect the production equipment and processes.

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<sup>4</sup> Cement, not to be confused with concrete, is a dry power, which reacts with water and is an essential element of concrete.

<sup>5</sup> I note that the Employer's exhibit, which lays out the Employer's managerial/supervisory and employee organization, does not appear to have the control room operators in managerial/supervisory position(s) relative to other employees.

## **B. Control Room Operators' Supervisory Status**

According to the Employer's job description for the control room operators, the control room operators, "under general supervision and according to established policies and procedures, monitor the operation of the production processing line function" and are "responsible for plant equipment start-up and shutdowns." The control room operators, as noted above, alternate between working in the control room and working around the plant (outside the control room). In the control room, the control room operators monitor the plant's production process by viewing computer screens, reviewing the production process, and by making adjustments to numerous variables in the process. Such adjustments include the material feed rates, the kiln speed, the fuel feed rates, the fan setting, and more. Production Manager Craig Mifflin testified that the control room operators make anywhere from a couple of adjustments a day to 50 or 60 adjustments a day. The control room operators make these adjustments pursuant to certain manuals and based on their training and extensive experience. The manuals do not cover all the situations that could arise in the production process. Consequently, control room operators have the discretion to make adjustments in those situations. The extent and nature of these situations were not detailed in the record. When the control room operators work around the plant, they will inspect the production equipment and make the necessary hands-on adjustments.

Regarding the supervisory status of the control room operators, Production Manager Mifflin testified for the Employer, that the control room operators do not have the authority to hire, fire, discipline, promote, evaluate, transfer, lay off or to recall employees. However, Mifflin testified that the control operators have the authority to assign and direct employees.<sup>6</sup> Moreover, the control room operator's job description provides that one of the job functions is to "direct peers as specified." Mifflin testified that the control operators assign or direct employees approximately three to ten times each day. Specifically, Mifflin testified that when the control room monitors indicate a plant malfunction (e.g., a conveyor belt shut down or a plug in the tire burning system), the control room operator will call another employee and ask that employee to check on the problem and/or to fix the problem. Mifflin also testified that the control room operator, located in the control room, could assign and direct anyone but primarily assigns and directs the shift supervisor, production utility employee or the other paired control room operator working around the plant. Mifflin further testified that if there is an emergency that would result in imminent bodily harm, the control operator has the authority to shut down the plant. Mifflin testified that the control room operator would hopefully discuss the emergency with Employer supervision/management before shutting down the plant. Mifflin did not elaborate on the frequency of these emergency shutdowns or on whether other unit employees also have the authority to order an emergency shutdown. Despite the foregoing, there is no evidence that the control room operators are held responsible for the actions of other employees or are evaluated based on their assignment and direction of other employees. Moreover, there is no evidence showing control room operators are subject to discipline in connection with their alleged responsibility/duty of assigning and/or directing other employees.

Contrary to Mifflin's testimony, control room operator Kenneth Miller testified that he did not have the authority to assign and direct employees. Miller testified about an incident in which he had a problem with a material feeder and he contacted the other control room operator by

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<sup>6</sup> In its brief, the Employer did not assert that the control room operators have the authority to assign. Rather, the Employer's brief focused only on the 2(11) indicia of responsibly directing employees. The Union in its brief, stated that the Employer was asserting that the control room operators have the authority to evaluate employees. However, the Employer's brief did not raise such an assertion. Regardless, the authority to evaluate employees is not one of the indicia set forth in Section 2(11) of the Act. See *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 (1999).

radio to inform him of the problem. Miller testified that he did not ask the other control room operator to fix the problem, but merely informed him of the problem. Miller also testified that sometimes, not always, the other control room operator radioed back to Miller when the other had fixed the problem. Miller further testified that emergencies are handled pursuant to the procedures laid out in a three-ring-binder and that the first thing he would do in an emergency is to contact his supervisor.

### **C. Community of Interest Factors**

#### **1. Functional Integration**

There is no evidence that any part of the Employer's plant is geographically isolated or separate. The Employer's production process is a straight-line operation from the unloading and crushing of raw materials to the storage and shipment of the manufactured end product, cement. The production equipment is maintained by an extensive maintenance crew, which comprises approximately 1/3 of the employees in the petitioned-for-unit. In terms of the production process, the production employees, with the exception of the shipping employees and general laborers, are nearly, equally divided into four crews of six employees who work together. All of the job classifications, with the exception of the shipping employees, control room operators and quality control technicians, generally work about the plant. Additionally, the control room operators and quality control technicians work about the plant during a portion of their workday.

#### **2. Frequency of Contact between Employees**

The Employer functionally divides employees in the petitioned-for-unit into two groups - production and maintenance. The maintenance employees work Monday through Friday, 6:30 a.m. to 3:00 p.m., while the production employees work rotating 12-hour shifts with 24-hour coverage. The shipping employees, who are included in the production department, work rotating 10-hour shifts.<sup>7</sup>

In terms of contact, control room operator Miller testified that the control room has radios and phones connected to other areas of the plant. Miller testified that sometimes the control room receives calls from maintenance or from the supervisors. Miller testified that maintenance, shipping and production utility employees generally communicate over the radio.

Within production, the control room operators, the production utility employees, the quality control technician and the material utility employees are divided into four crews designated by color (black, red, blue and green). Each crew consists of two control room operators, one production utility employee, one quality control technician and two material utility employees. Each crew also has a designated shift supervisor. Each crew works 12-hour shifts, 4 days on and 4 days off. Working crews meet daily with their respective shift supervisor to discuss their work for the day. Each crew has one control room operator working in the control room while the other control room operator works around the plant, inspecting equipment and the production process.

Control room operator Miller further testified that he would communicate with the shipping employees when the storage silos become full and shipping needs to change to a new silo. Miller also testified that he will contact the shipping employees when a truck has arrived and the shipping employees are in another area of the plant. Additionally, the control room

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Beyond this, the record is unclear on the precise work schedules of the shipping employees.

operators measure the silos in the shipping area and in the process discuss the day's operation with the shipping employees. Miller testified that sometimes shipping employees contact the control room operators when shipping needs a loader or someone to help shovel material to expedite the loading of trucks. Thus, it appears that employees, other than those in shipping, may also have contact with the Employer's customers.

In addition to Miller's testimony, preventative maintenance conveyor specialist Matthew Stradley testified that when he worked in shipping, he would contact the control room operator or supervisor to request help to clean up spills. Quality control technician John Buckmaster also testified that that he is in contact with the shipping department when they send him product test samples.

### **3. Interchange with Other Employees**

The record is sparse concerning interchange among production and maintenance employees. Yet, Miffen testified that the control room operators are never hired from outside the Employer's plant because of the requirement that the control room operators have previous knowledge of the Employer's processes.<sup>8</sup> Miffen further testified that in the past year, there have been several employees who have filled in for absent shipping employees. Specifically, Miffen testified that preventative maintenance conveyor specialist Matthew Stradley worked in shipping for an extended period of months.<sup>9</sup> Miffen further testified that general laborer Roy Kinoshita had been working in shipping for the past several weeks and that other general laborers had also worked in shipping for several weeks during extended absences because of illness. However, Production Manager Miffen could not identify these other general laborers.

### **4. Common Skills and Functions**

Each job classification has its own job description and pay progression manual. The job descriptions describe knowledge and skill requirements and specific job functions. Each job description contains items which are common to other jobs and items which are unique to that specific job. For example, the control room operator and the production utility job descriptions contain nearly identical knowledge and skill requirements and job functions. Both positions are responsible for inspecting equipment, analyzing and trouble shooting the electrical system, performing silo and bin measurements, and doing general clean up. On the other hand, the production utility employees are responsible for obtaining product samples and performing quality tests while the control room operator is responsible for maintaining the process logs, monitoring the control room and directing peers as specified.<sup>10</sup>

With regard to the shipping employees, they are responsible for operating computers, completing bills of lading, operating the cyclone air loading system, doing preventative maintenance on the rail cars and loading system, operating a forklift and the pneumatic door opener, completing the bulk loading, collecting samples, unloading, general clean up, measuring the silos, and aligning the rail cars. In addition to the foregoing, all the job descriptions for the production employees require certain physical abilities including walking,

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<sup>8</sup> Miffen did not elaborate on from what Employer's classifications the control room operators are transferred and/or promoted.

<sup>9</sup> I note that the record appears to misidentify this testimony as having been given by the Hearing Officer.

<sup>10</sup> As mentioned in Section B above, the only record evidence of direction on behalf of the control room operators was the testimony of Production Manager Miffen and Control Room Operator Miller. There is no additional testimony or documentary evidence revealing what is meant by the control room operators' job requirement that they direct peers as specified.

climbing, bending, pushing, lifting, etc. Furthermore, the job descriptions for the production employees, with the exception of the shipping employees, require a high school education or equivalent with additional college or technical training preferred.

The pay progression manuals require employees to learn common rules and rules unique to their respective job positions. The rules or procedures that are common to all employees include safety rules, environmental awareness rules, plant layout, communication systems, storeroom procedures, and plant rules. Additionally, the employees share some common equipment including the forklift, mobile sweeper and front end loader. According to their job descriptions, the shipping employees, material handlers (material utility), and general laborers are required to know how to use this equipment.

## **5. Commonality of Wages and Other Working Conditions**

The production and maintenance employees are covered by the same wage scale. According to this scale, the job classifications are listed as grade one through grade six. For instance, the general labor position is grade one, the production utility, material handler, shipping, and preventative maintenance conveyor specialist positions are grade three and the control room operator, preventative maintenance mechanical specialist, preventative maintenance instrument/electrical specialist, and technical specialist positions are grade six. Within each grade, an employee's wages are based on whether they are entry level, accomplished, or expert. For example, an entry control room operator earns \$24.08/hour while an expert control room operator earns \$25.01/hour. An employee's wage level within his or her grade depends on whether the employee has completed the requirements established in his or her pay progression manual.

Production and maintenance employees share the same benefits, including the Employer health plan, dental plan, life insurance, ESOP, disability plans, flexible spending accounts, 401(k) and retiree health care. Those same employees are also eligible for educational assistance, financial aid, paid holidays, floating holidays, bereavement leave, jury duty pay, military leave, vacation, sick leave, and equipment reimbursement.

## **6. Supervision**

Each department, maintenance and production, have front line supervisors who report to the department superintendent, who in turn reports to the department manager. The control room operators report to their respective shift supervisors. In addition to the control room operators, the same shift supervisors supervise the quality control technicians, the production utility employees, and the material handlers. The material handlers also have their own day-shift supervisor, who reports to the production superintendent. The shipping employees report to the shipping supervisor, who also reports to the production superintendent.

### **III. ANALYSIS**

#### **A. Supervisory Status**

Initially, the Employer argues that the control room operators are supervisors within the meaning of Section 2(11) of the Act. Section 2(3) of the Act excludes "any individual employed as a supervisor from the definition of 'employee.'" Section 2(11) of the Act defines "supervisor" as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive, and the “possession of any one of the authorities listed in [that section] places the employee invested with this authority in the supervisory class.” *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. *NLRB v. Kentucky River Community Care Inc.*, 121 S.Ct. 1861 (2001). The legislative history of Sec. 2(11) indicates that Congress intended to distinguish between employees who may give minor orders and oversee the work of others, but who are not necessarily perceived as part of management, from those supervisors truly vested with genuine management prerogatives. *George C. Foss Co.*, 270 NLRB 232, 234 (1984). For this reason, the Board takes care not to construe supervisory status too broadly because the employee who is deemed a supervisor loses the protection of the Act. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997). Thus, the burden of proving supervisory status is on the party alleging that such status exists. *Kentucky River*. That means that any lack of evidence in the record is construed against the party asserting supervisory status. *Freeman Decorating Co.*, 330 NLRB 1143 (2000). Moreover, whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established. *Phelps Medical Center*, 295 NLRB 486, 490-91 (1989). Additionally, mere opinions or conclusory statements do not demonstrate supervisory status. *St. Alphonsus Hospital*, 261 NLRB 620 (1982), enf’d. 112 LRRM 3168 (9<sup>th</sup> Cir. 1983); *Chevron U.S.A.*, 309 NLRB 59 (1991).

At the hearing, the Employer maintained the position that, of the primary 2(11) indicia, the control room operators only possess the authority to assign and/or to responsibly direct. With regard to the authority to assign and/or to responsibly direct employees, the Board has held that proof of independent judgment in the assignment or direction of employees entails the submission of concrete evidence showing how such decisions are made. *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000); *Crittenton Hospital*, 328 NLRB 879 (1999); *Franklin Home Health Agency*, 337 NLRB 826 (2002).

Here, there is a lack of concrete evidence, as the instant record appears only to show that control room operators ask employees to do relatively routine tasks on an irregular basis. In this regard, the Employer presented evidence that the control room operators will call another employee to fix something when the computer indicates a malfunction in the plant. According to the Employer, the control room operators may direct any employee when such a malfunction arises. However, there is no evidence that the control room operators direct anyone other than the product utility employees, the shift supervisors or the other control room operator. Additionally, there is no evidence that the control room operators’ direction of employees in this circumstance is based on independent judgment. Rather, the record discloses that control room monitors dictate or specify the timing and type of work to be done, thereby removing any independent judgment from the control room operator in directing the performance of a specified task. Moreover, there is a lack of concrete evidence regarding whether the control room operators have any discretion regarding to whom they make an assignment or regarding whom they responsibly direct in the performance of such tasks. Indeed, the record indicates that such assignments or directions may very well be given to the employee closest to the area requiring



attention. In the absence of such concrete evidence, the control room operators' assignment and direction of other employees appears to be merely routine and perfunctory in nature and dictated in large part by control room monitors or screens. See *Delta Mills, Inc.*, 28 NLRB 367, 370-71 (1987). See also *Palagonia Bakery Co.*, 339 NLRB No. 74, slip op. at 40 (2003) (finding no independent judgment where there was no evidence that the assignments required any particular skills or that the abilities of the employees performing the jobs differed greatly); and *Los Angeles Water and Power Employees Assoc.*, 340 NLRB No. 146 (2003); *Bozeman Deaconess Foundation*, 322 NLRB 1107 (1997).

Moreover, there is no evidence that the control room operators are evaluated based on their direction of other employees. Similarly, the Employer has produced no evidence regarding whether control room operators are subject to discipline with respect to their alleged responsibilities to direct employees. Based on the foregoing and the record as a whole, insufficient evidence exists to establish that the Employer holds the control room operators responsible or accountable with regard to their direction of other employees. See *Franklin Hospital Medical Center*, at 831.<sup>11</sup>

The Employer points to the control room operators' job description wherein the authority to direct employees appears. However, the Board has held that while an employer ostensibly may grant supervisory authority to individuals, statutory supervisory status requires the existence of "actual authority," and "mere paper authority does not confer supervisory status." *F.A. Bartlett Tree Expert Co.*, 325 NLRB 242 at fn. 1 (1997). I also note that if the control room operators were to be found supervisors, the Employer would have a relatively high ratio of employees to supervisors on each of the four, six-person crews, with each crew including two control room operators. However, absent evidence that individuals possess any of the enumerated indicia of supervisory status in Section 2(11), "there is no reason to consider so-called secondary indicia, such as their titles, the employee-supervisor ratio ... or pay differentials between them and others in their departments." *Training School at Vineland*, 332 NLRB 1412, supra at fn. 3 (2000); *Housner Hard-Chrome of Kentucky, Inc.*, 326 NLRB 426, 427 (1998).

The Employer cites *J.H. McNamara, Inc.*, 284 NLRB 1413, 1415 (1987) in support of its position that the control room operators are Section 2(11) supervisors. There, the disputed supervisor, Albert Lyons, was actually the Employer's plant manager at the wet concrete mix facility in question and the highest-ranking employer official on site. Additionally, the record in that matter provided concrete evidence regarding Lyon's managerial and supervisory authority, which was wide-ranging and extensive. Here, I have noted above that the Employer did not provide concrete evidence establishing the nature and extent of independent judgment allegedly exercised by the control room operators in directing other employees. Thus, the Employer's case cite on this issue is inapposite.

In light of the above and the record as a whole, I find that the Employer has not met its burden of establishing that the control room operators possess any of the indicia of Section 2(11) supervisory authority. In particular, I find that the control room operators do not possess the authority to assign or to responsibly direct employees.

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<sup>11</sup> "[C]onclusionary statements, without supporting evidence, are not sufficient to establish supervisory authority."); *North Shores Weeklies, Inc.*, 317 NLRB 1128 (1995) (noting the employer's failure to meet its burden where "the record does not reveal the press supervisors' particular acts and judgments that make up their direction of work."). Further, giving "some instructions or minor orders to other employees," does not confer supervisory status. *Franklin Home Health Agency*, 337 NLRB 826, 929 (2002). Only individuals with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen ... and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985), enf'd. in relevant part 794 F.2d 527 (9<sup>th</sup> Cir. 1986).

## **B. Community of Interest**

In addition to the control room operators' supervisory status, the Employer alleges that the control room operators and shipping employees do not share a sufficient community of interest with the other production and maintenance employees to warrant their inclusion in the petitioned-for-unit. In *The Boeing Co.*, 337 NLRB No. 24 (2001), the Board described its policy with respect to determining appropriate units:

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co.*, 331 NLRB No. 85, slip op. at 2 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997).

It is well settled that a plant-wide unit is presumptively appropriate and that a community of interest inherently exists among employees within a single plant. See *Airco Inc.*, 273 NLRB 348 (1984). Accordingly, the Employer has the burden to demonstrate that the interests of a specific job classification are so disparate from those of other employees that they cannot be represented in the same unit. *Id.* The Board's primary means of evaluating the appropriateness of a unit, is determining whether the proposed unit shares a community of interest. The Board examines several factors to determine whether the employees share a community of interest, such as: (1) functional integration; (2) frequency of contact with other employees; (3) interchange with other employees; (4) degree of skill and common functions; (5) commonality of wages, hours, and other working conditions; and (6) shared supervision. *Publix Supermarkets Inc.*, 343 NLRB No. 109 (2004); *Ore-Ida Foods*, 313 NLRB 1016 (1994).

In the present case, the Employer has an integrated straight-line production in which the control room operators and the shipping employees perform integral functions. Specifically, the control room operators ensure that the entire production line runs smoothly and efficiently. The shipping employees assist in ensuring the quality of the product by collecting and providing samples, by taking samples to the quality control technicians, and by ensuring that the correct product is loaded for transportation. Additionally, the evidence demonstrates that the production employees regularly work together and, with the exception of the shipping employees, all the production employees engage in some work throughout the plant.

In addition to functional integration, there is ample evidence of contact between the control room operators and the other employees. Control room operators work in crews with other production unit employees and participate in daily meetings with these other employees. Additionally, the control room operators are in regular radio contact with other production unit employees, including the shipping employees, the maintenance employees, and their respective crew. With regard to the shipping employees, control room operator Miller and quality control technician Buckmaster testified that they have regular contact with the shipping employees when inspecting the silos and securing samples for quality tests. Miller and preventative maintenance conveyor specialist Stradley further testified that control room operators and shipping employees communicate with one another over the radio when necessary.

With regard to interchange, there is no evidence in the record that the control room operators interchange with other employees, as it appears that the control room operators' skills are in high demand and there is little need for them to replace other employees. This is not to say that the control room operators could not interchange with other employees. Indeed, all of the control room operators were hired from within the Employer's plant. Additionally, the control room operators possess job requirements similar to the production utility employees. Moreover, the record demonstrates that control room operators assist the shipping employees or other employees when needed. As for the shipping employees, the production manager testified that other production unit employees have temporarily filled in for shipping employees for extensive periods of time.

Regarding skills and functions, the record demonstrates that the control room operators and shipping employees respectively share common skills and functions with other undisputed unit classifications, but also possess some skills and functions unique to their positions. As noted above, the control room operators share similar skills and job functions with the production utility employees. Additionally, the shipping employees share similar skills, particularly machine operation, with other material handlers and general laborers; indeed, they work on some of the same equipment or machines. To the extent that shipping employees and control room operators possess unique skills, these unique skills do not, alone, warrant finding them a separate and distinct group of employees, as the Board has found an appropriate unit in situations where the skills of the employees are significantly more divergent. See *Airco*, supra at 349.

With regard to wages, hours and other working conditions, the evidence demonstrates that control room operators and shipping employees are covered by the same wage scale applicable to other production and maintenance employees. Although the wages are different between control room employees and the shipping employees, those two groups of employees do not have unique hourly wages. In particular, the control room operators share the same wage grade (grade 6) with the preventative maintenance mechanical specialist, the preventative maintenance instrument/electrical specialist and the technical specialist. Further, shipping employees share the same wage grade (grade 3) with the production utility, the material handler, and the preventative maintenance conveyor specialist positions. Additionally, all production and maintenance employees share the same benefits detailed above. With regard to hours, although the shipping employees work distinct rotating 10-hour shifts, the control room employees work the same shift as the other production employees (rotating 12-hour shifts with 4 days on and 4 days off).

Finally, with regard to supervision, control room operators share common supervision with production utility employees, quality control technicians and material handlers. Additionally, all production employees, including shipping employees, share the same second level of supervision in the production superintendent. The Board has found that sharing second level supervision may be sufficient to show a community of interest. See *Transerv Sys.*, 311 NLRB 766 (1993).

In sum, I find that the Employer has failed to rebut the presumption in favor of the petitioned-for wall-to-wall unit.<sup>12</sup> This failure is based in the record and on the functional

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<sup>12</sup> While it is not clear from the Employer's brief, it appears that it may have cited *Yuengling Brewing Co.*, 333 NLRB 892 (2001) in support of its position that the control room operators should be excluded from the petitioned-for unit. Assuming, arguendo, that such is the case, I find that *Yuengling Brewing Co.*, is not applicable to the issues before me, as that case concerned whether highly skilled and/or licensed maintenance department employees (including electricians) should be included in a production and maintenance unit. There, the Board determined that

integration of the Employer's operations and sufficient contact among all production and maintenance employees. Additionally, the control room operators share skills, wages, benefits, work crews, and supervision with other production unit employees, who are, without dispute, included in the unit. Moreover, the shipping employees also share job skills, wages, and benefits with other production employees and production employees have temporarily filled in for shipping employees on an extensive basis.

#### **IV. CONCLUSION**

On the basis of the foregoing and the record as a whole, I find that control room operators do not possess indicia of supervisory authority as that term is defined in Section 2(11) of the Act. On the same basis, I further find that the control room operators and shipping employees share a sufficient community of interest with the other production and maintenance employees. Therefore, I shall include control room operators and shipping employees in the petitioned-for wall-to-wall unit of all production and maintenance employees. Accordingly, I shall direct an election in the following appropriate unit (hereinafter "Unit"):

All full-time and regular part-time production and maintenance employees employed by the Employer at its Seattle, Washington plant; excluding stores supervisor, maintenance planner, chemist intern, maintenance supervisor, instrument/electrical supervisor, labor superintendent/lead, shift supervisor, shipping supervisor, office clericals, managers, guards and supervisors as defined in the Act.<sup>13</sup>

There are approximately 54 employees in the Unit found appropriate.

#### **V. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall

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the maintenance department constituted a distinct and cohesive grouping of employees appropriate for collective-bargaining purposes based in significant part on the distinction in skills and functions of the maintenance employees relative to the production employees. Here, the Employer is attempting to exclude only a portion of its production employees (control room operators and shipping employees) from a production and maintenance unit. Thus, the circumstances here vary materially from those in *Yuengling Brewing Co.*

<sup>13</sup> Based on the record and in view of the parties' stipulation regarding the exclusion of the administrative assistant position, it is apparent that the parties' intention is to exclude all office clericals from the unit.

vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 19, AFL-CIO.

**A. List of Voters**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, **on or before June 13, 2005**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

**B. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**C. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by **5 p.m., EST on June 20, 2005**. The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlrb.gov](http://www.nlrb.gov).

**DATED** at Seattle, Washington this 6<sup>th</sup> day of June 2005.

\_\_\_\_\_/s/ Catherine M. Roth\_\_\_\_\_  
Catherine M. Roth, Acting Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, WA 98174